



PUBLIC NOTICE

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2000 DEC 22 P 12:00

DA 00-2869

News media information 202/418-0500 Fax-On-Demand 202/418-2830 Internet: <http://www.fcc.gov> [ftp.fcc.gov](ftp://ftp.fcc.gov)

December 22, 2000

**COMMISSION SEEKS COMMENT ON USA MEDIA GROUP, LLP'S PETITION FOR
PREEMPTION AND DECLARATORY RULING PURSUANT TO SECTION 253
CS Docket No. 00-252**

Comments Due: January 29, 2001

Reply Comments Due: February 13, 2001

On November 3, 2000, USA Media Group, LLC filed a petition pursuant to section 253 of the Communications Act of 1934, as amended, 47 U.S.C. § 253, seeking preemption of certain requirements and interpretations of the Truckee Donner Public Utility District ("TDPUD"). USA Media Group is a franchised cable television operator providing cable television service to subscribers in Truckee, CA and surrounding unincorporated areas of Nevada County, CA. Pursuant to a License Agreement entered into in 1965 by its predecessor, its cable distribution plant is attached to poles owned by the TDPUD, which it describes as a local government entity that provides electricity and water pursuant the 1921 California Public Utility District Act, Cal. Pub. Util. Code §§ 16461 and 16463 (West Anno. 2000).

USA Media Group states that it is attempting to upgrade its physical plant for enhanced cable and other broadband services, including high-speed Internet and other telecommunications services, by overlashing its current copper wires with fiber optic cable, using its existing attachments on the PUD's poles. It argues that the PUD anticipates installing its own network and has imposed new application, construction and relocation requirements on USA Media Group not required by USA Media Group's upgrade. It also complains that the PUD interprets the License Agreement to preclude any offering of new telecommunications services over either existing or upgraded facilities attached to PUD's poles and is requiring a renegotiation of the License Agreement before USA Media Group can offer new services. USA Media Group argues that the Internet access it seeks to provide to subscribers over its cable broadband facility is a telecommunications service subject to section 253 under *AT&T Corp. v. City of Portland*, 216 F.3d 871, 878 (9th Cir. 2000), that the PUD's requirements constitute a barrier to entry, and that they are not being imposed in a competitively neutral and nondiscriminatory manner, in violation of section 253. It asks that the Commission preempt these PUD requirements and interpretations.

Interested parties may file comments regarding the USA Media Group, LLC petition no later than January 29, 2001 and reply comments no later than February 13, 2001, with the Magalie Roman Salas, Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW-B204, Washington, DC 20554. All pleadings are to reference **CS Docket No. 00-252**. Interested parties should file an original and six copies of all pleadings. An additional copy of all pleadings must also be sent to Janice Myles, Room 5-C327, 445 12th Street, SW, Washington, DC 20554, to Trudy Hercules, Room 4-C474, 445 12th Street, SW, Washington, DC 20554, and to the Commission's contractor for public services records

duplication, International Transcription Services, Inc. (ITS), 445 12th Street, SW, Room CY-B402, Washington, DC 20554. The USA Media Group, LLC petition is available for inspection and copying during normal business hours in the FCC's Reference Center, Room CY-A257, 445 12th Street, SW, TW-A325, Washington, DC 20554. Copies also can be obtained from ITS at 445 12th Street, SW, Room CY-B402, Washington, DC 20554 or by calling ITS at (202) 857-3800 or faxing ITS at (202) 857-3805.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/efcs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to efcs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

We will treat this proceeding as "permit, but disclose" for purposes of the Commission's *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216. Parties making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b)(2), as revised. Other rules pertaining to oral and written presentations are set forth in section 1.1206(b) as well. Interested parties are to file with the Secretary, FCC, and serve Janice Myles, Trudy Hercules, and ITS, with copies of any written *ex parte* presentations or summaries of oral *ex parte* presentations in these proceedings in the manner specified above.

For further information on USA Media Group, LLC's petition contact Janice Myles, Common Carrier Bureau at (202) 418-1577, or Trudy Hercules, Cable Services Bureau at (202) 418-2288, and for general information contact Michelle Russo, Cable Services Bureau, at (202) 418-2358, e-mail mrusso@fcc.gov, or Michael Balmoris, Common Carrier Bureau, at (202) 418-0253, e-mail mbalmori@fcc.gov.

TTY: (202) 418-7172.

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